MICHIGAN LAW REVIEW

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NOTE AND COMMENT.

THE FORM OF THE SUMMONS UNDER THE RECENT MICHIGAN JUDICATURE ACT.—It would be rather remarkable if in revising such a large portion of the statutes as was undertaken by the Commission on Revision and Consolidation of Statutes of the State of Michigan, appointed in 1913, which reported to the legislature the recently enacted Judicature Act (Public Acts of Michigan, 1915, § 314), some ambiguity or uncertainty were not to appear in the revision. The Judicature Act is no exception to the general rule, as the lawyer who attempts to begin suit by summons under it will discover at the very outset.

Section 2 of Chapter XIII, of the act provides: "The style of all process from courts of record at law and in chancery in this state shall be 'In the name of the people of the State of Michigan,' and such process shall be tested in the name of the chief justice, or presiding justice or judge, or one of the judges of the court from which the same shall issue, be sealed with the seal of the court, and signed by the clerk thereof, and, before the delivery thereof to any officer to be executed, shall be subscribed with the name of the attorney for the plaintiff and the officer by whom the same shall be issued * * *."

It will be noted that the section requires the summons to be signed by the clerk and subscribed with the name of the officer by whom the same shall be issued, who would be either the clerk or his deputy. Just what the legislature and the commission intended thereby is not clear. It is barely possible that it was considered desirable to know whether the clerk or his deputy issued the summons, and that it was intended to secure such information by this provision. It is more likely, however, that the provision is the result of mistake rather than intention. A mistake in the language of that section of the act dealing with the form of the summons occurred in the revision of 1846 (§ 1, Chap. 97, Rev. Stat. Mich. 1846), which rendered the statute uncertain as to whether it required the clerk or other issuing officer, or the plaintiff's attorney, or both, to sign or subscribe the summons. The form of summons prescribed by the court rules remedied the difficulty by requiring the signature of the clerk and the indorsement or subscription of the plaintiff's attorney. It is probable that the proposers and enactors of the recent Judicature Act intended to correct the ambiguity in the former statute by the section quoted, and this would have been accomplished had the words "and the officer by whom the same shall be issued," which conclude that portion quoted above, been omitted. This conclusion is strengthened by a note appended to the said section in the Commission's report (p. 93 of report), which indicates that the intent was to merge in this section the contents of the section of the old statute (§ 9984, Mich. Comp. Law 1897), which dealt with the form of process and of a portion of the sections (§§ 452 and 453, Mich. Comp. Laws, 1897) dealing with the chancery subpoena, none of which required the clerk to sign the process twice. The new statute as it stands requires too much, *i. e.,* two signatures of the clerk instead of one.

As indicated above the ambiguity in the old statute was remedied by the court rules (§ c, Circuit Court Rule I). The court will remove the difficulty pointed out in the new act by the same means. If the court in the rules should provide the same form of summons as is at present required thereby, a nice question might be raised as to the court's power to make sufficient a summons not containing some of the statutory requirements. As such a question, if it did arise, would be finally decided by the tribunal upon which devolves the duty of prescribing the rules, the decision would undoubtedly uphold the form of summons prescribed by the rules. G. S.

"Reasonable Doubt" and "Preponderance of Evidence."—In the case of *People* v. *Eggleston,* 152 N. W. 944 (Mich. 1915), the trial court instructed the jury that the defense of insanity "must be established by a preponderance of proof." This instruction the Supreme Court holds erroneous, saying, "While it is true that at the outset there is a presumption of sanity, as soon as evidence is introduced on behalf of respondent tending to overthrow that presumption, the burden of proof rests with the people to convince the jury beyond reasonable doubt of the respondent's sanity, that being one of the necessary conditions upon which guilt may be predicated."